



Oppose SB 738

The members of the Michigan Association for Justice strongly oppose Senate Bill 738 sponsored by Senator McManus. SB 738 would radically alter the standard of care for equine liability.

- Michigan law *already provides a special grant of immunity for equine activities* in recognition of their inherent risks.
- SB 738 grants radical, excessive blanket immunity for all conduct *—no matter how negligent*—short of “willful and wanton” misconduct.
- The radical “willful and wonton” language in SB 738 is defined in Michigan law as follows. “Willful misconduct means conduct or a failure to act that was **intended to harm** the plaintiff.” “Wanton misconduct means conduct or a failure to act that shows such **indifference to whether harm will result as to be equal to a willingness that harm will result.** [M Civ JI 14.11 & M Civ JI 14.12]
- SB 738 would therefore grant immunity for grossly negligent acts and omission up to and possibly including intentional harm.

Equine activities already enjoy extensive but limited special immunity from liability.

Current Michigan law offers a more than adequate level of immunity for the risks of equine activity. Generally, Section 3 of the Michigan Equine Activity Liability Act provides immunity from liability for injuries “resulting from an inherent risk of an equine activity.” MCL 691.1663.

The Act defines “inherent risk of an equine activity” as “a danger or condition that is an integral part of an equine activity,” such as the propensity of horse to react unpredictably to certain stimuli.

However, the Act also provides certain reasonable exceptions to this immunity. One of these exceptions is contained in Section 5(d) of the Act and allows liability when a person “[c]ommits a negligent act or omission that constitutes a proximate cause of the injury, death, or damage.” MCL 691.1665(d).

SB 738 would all but immunize intentional harm. Under the proposed standards of SB 738 Michigan law would allow that parties covered under the Act are not liable for injuries if they are negligent, careless, or even reckless, but may only be found liable if their actions or omissions showed an intent to cause the harm, or such indifference as to whether or not the harm might occur as to be equivalent to actually intending or desiring that the harm would occur.